



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 99 189 51397

Office: VERMONT SERVICE CENTER

Date:

JAN 18 2001

IN RE: Petitioner:

Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:



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INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a New York corporation that claims to be an importer and seller of products that are manufactured by its parent company, [REDACTED] Ltd, located in the People's Republic of China. It seeks to employ the beneficiary as its director of marketing and chief operating officer (COO) and, therefore, endeavors to classify her as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director of the Vermont Service Center denied the petition because the petitioner failed to establish that the beneficiary is currently and will continue to be employed in a primarily executive or managerial capacity.

On appeal, counsel submits a brief. The petitioner submits a letter on behalf of the beneficiary, which details the beneficiary's role within the company; copies of its 1998 corporate income tax returns; and evidence of its business activities.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The director found that the beneficiary does not meet the definition of a multinational manager or executive because the petitioner, as a small company, cannot support a position that is primarily executive or managerial in nature. According to the director, "it does not appear possible that the beneficiary is spending a majority of her time in a managerial or executive position, as this would leave too few employees to do the actual productive work." In reaching her conclusion, the director

referred to a list of the beneficiary's duties that a previous attorney for the petitioner submitted, which appeared to indicate that the beneficiary spent approximately 30 hours per week on non-executive and non-managerial functions.

On appeal, counsel claims that the petitioner's prior counsel provided an incorrect description of the beneficiary's weekly activities, a claim that the petitioner also presents in its letter accompanying the appeal. Both the petitioner and counsel argue on appeal that the beneficiary is both an executive and a manager because she directs the management of the organization and manages an essential function.

According to the petitioner and counsel, the beneficiary's role as the director of marketing and COO is critical to the company because the beneficiary has developed and implemented a comprehensive and successful marketing strategy, and developed new product lines. The petitioner further contends that although the petitioner's corporate structure involves a president and another vice president, the individuals who occupy these positions also occupy executive positions for other companies. The beneficiary, therefore, functions at a senior level within the organization, exercises wide latitude in her discretionary decision-making, and controls the work of all subordinate employees.

Counsel also argues that the beneficiary manages an essential function, which is the marketing of products to U.S. companies, including the Smithsonian Institution, the Guggenheim Museum, the Museum of Natural History in New York, Urban Outfitters, and Bath & Body Works, among others. Counsel also notes that, by virtue of the beneficiary's marketing strategies, the petitioner's products have been featured in popular fashion magazines such as Vogue, Glamour, and Marie Claire.

Finally, counsel argues that the prior approval of an L-1A petition on behalf of the beneficiary shows that she functions in a managerial or executive capacity.

Counsel's arguments are persuasive. The evidence indicates that the beneficiary functions in a primarily managerial capacity.

To qualify as a multinational manager, an individual must primarily: (1) manage the organization, or a department, subdivision, function or component of the organization; (2) exercise direction over the day-to-day operations of the activity or function of which he or she has authority; (3) either supervise and control the work of other supervisory, professional, or managerial employees, or manage an essential function within the organization, or a department or subdivision of the organization, and (4) have the authority to hire and fire or recommend personnel actions if he or she directly supervises other employees, or, if the managerial employee does not supervise other employees, functions at a senior level within the organizational hierarchy or with respect to the function managed.

In the instant case, the director's finding that the size of the petitioner could not support a primarily executive or managerial position does not comport with evidence in the record.

First, the petitioner has successfully explained an apparent discrepancy between the list of the beneficiary's duties that a prior attorney submitted, and the list of the beneficiary's duties the petitioner submits on appeal. The petitioner sufficiently demonstrated that the beneficiary manages the organization due to the absence of the president and another vice president, who are merely advisors to the beneficiary in the direction of the company.

Second, the petitioner has established that even though the beneficiary does not supervise supervisory, managerial or professional employees, she, nevertheless, manages an essential function, which is the sales and marketing of its products to U.S. companies and consumers.

Third, the petitioner has established that because the beneficiary is responsible for developing new product lines and their marketing strategies, she functions at a senior level with respect to the function she manages.

Finally, the petitioner has established that the beneficiary exercises discretion over all of the day-to-day operations of the marketing function by controlling and directing the work of other employees.

Based on the evidence in the record, the beneficiary's position with the U.S. entity is primarily managerial. Therefore, the director's objection has been overcome.

Regarding counsel's argument that the director's denial of the instant I-140 petition is inconsistent with the prior L-1A nonimmigrant visa approvals, numerous decisions have established that the Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., Sussex Engg. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); Matter of Church Scientology Int'l., 19 I&N Dec. 593, 597 (BIA 1988). Although it does not appear in this case that the prior approval of the beneficiary's L-1A petition was erroneous, the director was not precluded from denying the I-140 petition solely because a prior L-1A visa petition had been approved.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained.